

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

J&J CLASS 1

Judge Patti B. Saris

**CLASS COUNSEL'S MOTION TO ADD CLASS ONE REPRESENTATIVE
FOR THE JOHNSON & JOHNSON DEFENDANTS**

Class Counsel respectfully move the Court for leave to add Mrs. Jimmie Austed as a Class 1 representative for the J&J Defendants. As grounds for the Motion, together with the accompanying Memorandum and Affidavit of John A. Macoretta ("Macoretta Affidavit"), Class Counsel state as follows:

1. On March 26, 2010, Don Haviland filed a Notice of Voluntary Dismissal, seeking to dismiss without prejudice the "individual claims" of both of the Class 1 representatives for the J&J Defendants. *See* Dkt. No. 7013.

2. On May 19, 2010, this Court entered Case Management Order No. 33, requiring, *inter alia*, Class Counsel to add a class representative by today. Class Counsel have secured a replacement Class 1 representative and wish to add Mrs. Austed so that the Class 1 Plaintiffs' case against the J&J Defendants may proceed.

3. As set forth in the attached Macoretta Affidavit, Ms. Austed has been taking Remicade since approximately 2000. Mrs. Austed has been a Medicare Part B beneficiary during that time and has made percentage co-payments for her Remicade infusions. She has been advised of the status of the litigation and wishes to serve as a class representative.

4. **Certification.** Pursuant to Local Rule 7.1(a)(2), Class Counsel have consulted with counsel for J&J Defendants with respect to this Motion and, while the J&J Defendants oppose class certification, they currently take no position with respect to Ms. Austed pending discovery and a review of her suitability under the federal rules.

WHEREFORE Class Counsel respectfully request leave to add Mrs. Austed as a Class 1 representative for the J&J Defendants, and all other relief that this Court deems just and appropriate.

DATED: June 9, 2010

By /s/ Steve W. Berman

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CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on June 9, 2010, I caused copies of **CLASS COUNSEL'S MOTION TO ADD CLASS ONE REPRESENTATIVE FOR THE JOHNSON & JOHNSON DEFENDANTS** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

/s/ Steve W. Berman

Steve W. Berman